

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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DANIEL W. GIL and JOHN W. REGAN,  
  
Junior Party,<sup>1</sup>

v.

MARK ABRAMOVITZ, KATHLEEN MATTERS,  
MOHAMMED ADAM, YVES BOIE  
and THOMAS H. RUSHMORE,  
  
Senior Party.<sup>2</sup>

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Patent Interference No. 103,966

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Before CAROFF, SCHAFER and HANLON, Administrative Patent  
Judges.

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<sup>1</sup>Application 08/155,005, filed November 19, 1993.  
Assignors to Allergan & Arozona Board of Regents.

<sup>2</sup>Application 08/083,746, filed June 25, 1993. Assignors  
to Merck Frosst Canada Inc.

Interference No. 103,966

CAROFF, Administrative Patent Judge.

JUDGMENT

In a paper entitled "Concession of Priority - Counts 1-4" (Paper No. 25) filed on June 23, 1998 (sic: July 23, 1998), Abramovitz et al., the senior party, requests entry of adverse judgment under 37 CFR § 1.662(a) with respect to counts 1, 2 and 4; whereas Gil et al., the junior party, requests entry of adverse judgment with respect to count 3.

Accordingly, judgment as to the subject matter of counts 1, 2 and 4 is hereby awarded to Gil et al. Therefore, as to count 1, Abramovitz et al. are not entitled to their involved claims 3, 5-7 and 10-13. On this record, Gil et al. are entitled to their involved claims 2, 5 and 27-28.

As to count 2,<sup>3</sup> Abramovitz et al. are not entitled to their involved claims 14-15. On this record, Gil et al. are

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<sup>3</sup>We note that an unopposed preliminary motion to, inter alia, add Gil et al. claims 29-32 and Abramovitz et al. claims 14-17, respectively, to each of the involved applications was granted in a Decision on Motions (Paper No. 19). Attention is directed to the statements in that decision advising the parties to make sure that those claims are formally added to the respective applications by amendment. Attention is also directed to the statement on page 2 of that decision regarding reconsideration of patentability at the discretion of the examiner.

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entitled to their involved claims 29-30.

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As to count 4, Abramovitz et al. are not entitled to their involved claim 17. On this record, Gil et al. are entitled to their involved claim 32.

Judgment as to the subject matter of count 3 is hereby awarded to Abramovitz et al. Therefore, Gil et al. are not entitled to their involved claim 31. On this record, Abramovitz et al. are entitled to their involved claim 16.

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